

MAINE HARNESS RACING COMMISSION
MINUTES OF MEETING
July 8, 2015
Gambling Control Board Conference Room
Department of Public Safety Building
45 Commerce Drive, Augusta, Maine

Commission Members Present: Barbara Dresser, Chair, Gary Reed, William McFarland and Dirk Duncan.

Staff Members Present: Ron Guay, AAG, Henry Jackson, Carol Gauthier, Josh Panek and Zachary Matzkin, DVM.

ADJUDICATORY HEARINGS:

1. **RE: Marissa Tyler** has requested the Commission to reconsider the penalty imposed by the Commission on May 22, 2105. Ms. Tyler was present. Commissioner Dresser recused herself from the hearing. Assistant Attorney General Guay was the hearing officer. Mr. Petrelli addressed the Commission for Ms. Tyler. After deliberations, Commissioner Reed made a motion to not reconsider the request for reconsideration. Commissioner McFarland seconded. Vote 2-1. Commissioner Duncan opposed.
2. **RE: Patricia Switzer, Complaint Number 2015 MSHRC 019.** Ms. Switzer is alleged to have violated MSHRC Rules Chapter 11 Section 1. Ms. Switzer is trainer of record of "Civil Cause". A blood sample obtained from Civil Cause following the Fifth Race on April 5, 2015 at Scarborough Downs disclosed the presence of an excessive level of Cobalt, a Class III Drug. Continued to the August meeting to allow legal counsel to prepare before the Commission.
3. **RE: Patricia Switzer, Complaint Number 2015 MSHRC 020.** Ms. Switzer is alleged to have violated MSHRC Rules Chapter 11 Section 1. Ms. Switzer is trainer of record of "Civil Cause". A blood sample obtained from Civil Cause following the Fifth Race on April 11, 2015 at Scarborough Downs disclosed the presence of an excessive level of Cobalt, a Class III Drug. Continued to the August meeting to allow legal counsel to prepare before the Commission.
4. **RE: Patricia Switzer, Complaint Number 2015 MSHRC 034.** Ms. Switzer is alleged to have violated MSHRC Rules Chapter 11 Sections 1 and 12. Ms. Switzer is trainer of record of "The Ring King". A blood sample obtained from The Ring King following the Seventh Race on May 17, 2015 at Scarborough Downs disclosed the presence of Erythropoietin (EPO), a Class II Drug. Continued to the August meeting to allow legal counsel to prepare before the Commission.
5. **RE: Philip Sowers, Jr., Complaint Number 2015 MSHRC 033.** Mr. Sowers is alleged to have violated MSHRC Rules Chapter 11 Section 8. Mr. Sowers is trainer of record of "Mr Tommy Fra". A blood sample obtained from Mr Tommy Fra following the Fifth Race at Scarborough Downs on May 22, 2015 disclosed the presence of two Non-Steroidal Anti-Inflammatory Drugs (NSAIDs) above the thresholds for the presence of two NSAIDs. Mr. Sowers was present. Mr. Jackson stated that the notice of hearing should be corrected to read Bangor Raceway and not Scarborough Downs on May 22, 2015. Assistant Attorney General Guay stated that Mr. Sowers stipulates to the lab test results, the trainer of record of the horse Mr Tommy Fra and that the horse raced in the fifth race at Bangor Raceway on May 22, 2015. Mr. Sowers stated yes to the stipulations. Mr. Jackson presented the following exhibits: Exhibit 5, Notice of hearing, Exhibit 4,

Notice of Positive Test and Exhibit 3, Lab test results. Assistant Attorney General Guay admitted the exhibits with no objection from Mr. Sowers. Mr. Sowers did not admit to the violation. Mr. Sowers presented Exhibit 1, Statement from Dr. McNitt for admission. Assistant Attorney General Guay admitted the exhibit without objection. Mr. Sowers provided testimony. Mr. Jackson stated that Dr. McNitt's clerk typed up the letter stating that the amount of the drug administered was 100 cc. Once Dr. McNitt noticed this error, she sent a corrected letter to our office. After testimony, Assistant Attorney General Guay closed the hearing. After deliberations, Commissioner McFarland made a motion that they agree there was a violation of the rules. Commissioner Reed seconded. Vote 3-1 Commissioner Duncan opposed.

Assistant Attorney General Guay reopened the hearing for the penalty phase. Mr. Sowers provided testimony. Mr. Jackson recommended under Chapter 17, category C that a \$100 fine be assessed, and the return of the purse from the owner. Assistant Attorney General Guay closed the hearing. After deliberations, Commissioner McFarland made a motion that they assess a \$500 fine with all but \$200 suspended the return of the purse for the owner and no suspension of the horse due to mitigating circumstances. Commissioner Reed seconded. Vote 4-0.

- 6. RE: Rodney Grady, Complaint Number 2015 MSHRC 014.** Mr. Grady is alleged to have violated MSHRC Rules Chapter 11 Section 1. Mr. Grady is trainer of record of "Go Jesse Go". A blood sample obtained from Go Jesse Go following the Seventh Race at Scarborough Downs on May 22, 2015 disclosed the presence of Methocarbamol, a Class IV Drug. Mr. Grady was present. Assistant Attorney General Guay asked Mr. Grady if he would stipulate to the fact that he was the trainer of record of Go Jesse Go, and the horse raced in the seventh race at Scarborough Downs on May 22, 2015 and he would not dispute the lab test. Mr. Gray agreed. Mr. Jackson presented Exhibit 3, Lab results and Exhibit 5, Notice of Hearing. Assistant Attorney General Guay admitted the exhibits. Mr. Grady did not object to the submission. After testimony, Assistant Attorney General Guay closed the hearing. After deliberations, Commissioner Duncan made a motion of \$500 fine with all but \$50 suspended and the return of the purse. Commissioner McFarland seconded. Vote 3-1 Commissioner Reed opposed.

- 7. RE: W. Drew Campbell, Complaint Number 2015 MSHRC 017.** Mr. Campbell is alleged to have violated MSHRC Rules Chapter 11 Section 1. Mr. Campbell is trainer of record of "Remix". A blood sample obtained from Remix following the Eighth Race on April 4, 2015 at Scarborough Downs disclosed the presence of an excessive level of Cobalt, a Class III Drug. Mr. Campbell was present. William Childs representing Mr. Campbell was present. Assistant Attorney General Guay opened the hearing. Attorney Childs made legal argument for a motion to dismiss this case due to the fact that the notice is insufficient. Mr. Jackson stated that in Attorney Childs argument he stated that there is nothing in the rule that refers to Cobalt as a prohibited substance, but there is a reference in Chapter 1, Section 1, Subsection 66 that does refer to a biological substance at a level greater than a normal untreated horse. Assistant Attorney General Guay stated that he would like the Commission to make a motion to whether or not they wish to dismiss the complaint. Commissioner McFarland made a motion to deny the motion to dismiss. Commissioner Reed seconded. Vote 4-0.

Commissioners were excused from the hearing room at this point. Assistant Attorney General Guay asked Mr. Jackson and Attorney Childs questions regarding their witnesses and discovery. After a brief discussion, they decided to continue the hearing to September 8, 2015 meeting.

8. **RE: W. Drew Campbell, Complaint Number 2015 MSHRC 018.** Mr. Campbell is alleged to have violated MSHRC Rules Chapter 11 Section 1. Mr. Campbell is trainer of record of "J J S Jet". A blood sample obtained from J J S Jet following the Eighth Race on March 29, 2015 at Scarborough Downs disclosed the presence of an excessive level of Cobalt, a Class III Drug. Continued to September 8, 2015 meeting.
9. **RE: Stephen Murchison, Complaint Number 2015 MSHRC 021.** Mr. Murchison is alleged to have violated MSHRC Rules Chapter 11 Section 1. Mr. Murchison is trainer of record of "Ashlee's Cool Gal". A blood sample obtained from Ashlee's Cool Gal following the Ninth Race on April 18, 2015 at Scarborough Downs disclosed the presence of an excessive level of Cobalt, a Class III Drug. Mr. Murchison was present. Assistant Attorney General Guay asked Mr. Murchison if he would stipulate to the trainer of record of the horse Ashlee's Cool Gal and that the horse raced at Scarborough Downs on April 18, 2015. Mr. Murchison stated yes. Mr. Jackson presented the following exhibits. Exhibit 1, Race Program; Exhibit 2, Sample Tag; Exhibit 3, Test results from LGC lab and the University of Kentucky; Exhibit 4, Notice of Positive Test (6/15/2015) and Exhibit 5, Notice of Hearing (6/26/2015). Mr. Murchison had no exhibits. Assistant Attorney General Guay entered into record the exhibits. Mr. Murchison had no objection to the exhibits. Dr. Matzkin testified. Assistant Attorney General Guay closed the hearing. After deliberations, Commissioner McFarland made a motion of a finding for the violations that Mr. Murchison was the trainer of record of Ashley's Cool Gal on April 18, 2015 that the horse finished first in the ninth race at Scarborough Downs and had an excessive level of Cobalt present in its system in violation of Commission rules, and Mr. Murchison breached his trainer duties for this horse. Commissioner Reed seconded. Vote 4-0.

Assistant Attorney General Guay asked the Commission members the following questions for the finding of fact for the finding of the category of violation for Cobalt. Do the Commission members agree that the excessive level of Cobalt is a regulation of Chapter 11, Section 10-1B? Do the Commission members agree that the basis of that finding is that the drug has no legitimate therapeutic indication in the equine athlete? Do the Commission members agree that the presence of Cobalt has a high influence on the performance of the equine athlete? Commissioner members agreed on all three questions.

Commissioner Reed made a motion that is based upon their finding of a violation of Chapter 11, Section 10-1B, which is a Class I drug violation which correlates into a Category A penalty that a proposal of one year suspension for the trainer, a \$1,000 fine for the trainer and the return of purse and the horse placed on the steward's list for 45 days. Commissioner Duncan seconded. Vote 4-0.

10. **RE: Randy Bickmore, Complaint Number 2015 MSHRC 022.** Mr. Bickmore is alleged to have violated MSHRC Rules Chapter 11 Section 1. Mr. Bickmore is trainer of record of "Luvnuisfun". A blood sample obtained from Luvnuisfun following the First Race on April 5, 2015 at Scarborough Downs disclosed the presence of an excessive level of Cobalt, a Class III Drug. Mr. Bickmore was present. Attorney Childs representing Mr. Bickmore was present. Assistant Attorney General Guay opened the hearing. Attorney Childs made a motion to dismiss the case because the notice of hearing was insufficient. Assistant Attorney Guay asked for a motion from the Commissioners. Commissioner McFarland made a motion to deny the motion to dismiss. Commissioner Reed seconded. Vote 4-0. Assistant Attorney General Guay stated that the hearing will be continued to September 8, 2015 meeting.

- 11. RE: Randy Bickmore, Complaint Number 2015 MSHRC 023.** Mr. Bickmore is alleged to have violated MSHRC Rules Chapter 11 Section 1. Mr. Bickmore is trainer of record of "Moon Is On Fire". A blood sample obtained from Moon Is On Fire following the Seventh Race on April 5, 2015 at Scarborough Downs disclosed the presence of an excessive level of Cobalt, a Class III Drug. Assistant Attorney General Guay stated that the hearing will be continued to September 8, 2015 meeting.
- 12. RE: Randy Bickmore, Complaint Number 2015 MSHRC 024.** Mr. Bickmore is alleged to have violated MSHRC Rules Chapter 11 Section 1. Mr. Bickmore is trainer of record of "Luvnuisfun". A blood sample obtained from Luvnuisfun following the First Race on April 12, 2015 at Scarborough Downs disclosed the presence of an excessive level of Cobalt, a Class III Drug. Assistant Attorney General Guay stated that the hearing will be continued to September 8, 2015 meeting.
- 13. RE: Randy Bickmore, Complaint Number 2015 MSHRC 025.** Mr. Bickmore is alleged to have violated MSHRC Rules Chapter 11 Section 1. Mr. Bickmore is trainer of record of "Ringo". A blood sample obtained from Ringo following the Seventh Race on April 18, 2015 at Scarborough Downs disclosed the presence of an excessive level of Cobalt, a Class III Drug. Assistant Attorney General Guay stated that the hearing will be continued to September 8, 2015 meeting.
- 14. RE: Randy Bickmore, Complaint Number 2015 MSHRC 026.** Mr. Bickmore is alleged to have violated MSHRC Rules Chapter 11 Section 1. Mr. Bickmore is trainer of record of "Moon Is On Fire". A blood sample obtained from Moon Is On Fire following the Ninth Race on April 19, 2015 at Scarborough Downs disclosed the presence of an excessive level of Cobalt, a Class III Drug. Assistant Attorney General Guay stated that the hearing will be continued to September 8, 2015 meeting.

UNFINISHED BUSINESS:

1. Review Chapter 11 for final passage for 30 day written comment period. Review Chapter 7 and 1 for proposed changes. This item was continued to the August meeting.

NEW BUSINESS:

1. None.

REPORTS:

1. Executive Director's report will be continued to the July 9, 2015 meeting.

OTHER BUSINESS:

1. None.

PUBLIC COMMENT:

Ms. Perkins addressed the Commission regarding the sire stakes program. The horse supply has been full fields so far.

EXECUTIVE SESSION:

None.

The meeting adjourned at 3:10 p.m.

Respectfully submitted by:
Henry W. Jackson

Executive Director